

SUPPLEMENTAL RESPONSE TO JANUARY 6, 2005 OFFICE ACTION
Serial No. 09/781,937
Page 20 of 25

REMARKS

This is intended as a supplemental response to the July 6, 2005 Amendment, which is a full and complete response to the Office action dated January 6, 2005. Although Applicants believe the remarks submitted therein support Applicants' assertion that the claimed invention is patentable over the cited references, with respect to the Gilman and Marsh references, the previous arguments are now considered moot in view of the Declaration under 37 C.F.R. 1.131 being submitted herewith, which removes the Gilman and Marsh references as available prior art.

The Declaration under 37 C.F.R. 1.131, submitted herewith, was reviewed and signed by two of the inventors, namely Brad Buxton and David Nash. A diligent effort and attempt was made to contact each of the remaining inventors of the presently claimed invention. Applicants counsel prepared and mailed certified, return receipt requested letters to the last known addresses of the inventors, including a copy of the Rule 131 Declaration.

The letter to Daniel Alger was returned undeliverable, address not known, by the U.S. Postal Service. Applicant's counsel also attempted to contact the following inventors, John Stapleton, Trajan King, Claire Bulkus, Dan Alger, Frank Hosea, John Garvin, Matt Egen, Maria Dobson and Gilbert Willoughby by telephone after obtaining telephone contact information from www.superpages.com. Only one inventor, John Garvin, returned Applicant's counsel's call and was uncooperative. The remaining inventors do not have public contact information that Applicant's counsel can readily and reasonably obtain from public sources. Where it is shown that a joint inventor is deceased, refuses to sign, or is otherwise unavailable, the signatures of the remaining joint inventors are sufficient. MPEP 715.04. As such, Applicants' counsel believe that reasonable attempts and efforts to contact each of the inventors listed on the application were made and has satisfied the obligation under 37 C.F.R. 1.47.

SUPPLEMENTAL RESPONSE TO JANUARY 6, 2005 OFFICE ACTION
Serial No. 09/781,937
Page 21 of 25

In view of the above amendments and the following discussion, Applicants submit that none of the claims now pending in the application are anticipated under the provisions of 35 U.S.C. §102 or rendered obvious under the provisions of 35 U.S.C. §103. Thus, Applicants believe all of these claims are now in allowable form.

Claims 1-71 remain pending in the application and are shown above. Claims 1-71 stand rejected. Reconsideration of the rejected claims is requested for reasons presented below.

I. Rejection of Claims 8 and 15 under 35 U.S.C. §112

On page 2 of the Office action, the Examiner rejected claims 8 and 15 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicants regard as the invention. Specifically, the Examiner asserts claims 8 and 15 "cannot be clearly understood due to the open-ended nature of the Markush group." Specifically, the Examiner asserts claims 8 and 15 are "indefinite as to scope in the use of the term 'consisting essentially of' in the phrase 'nonprice market terms are selected from the group consisting essentially of.'" In the July 6, 2005 amendment, Applicants incorporated the Examiner's suggested amendment to claims 8 and 15. Thus, claims 8 and 15 now include the phrase "consisting of" instead of "consisting essentially of". This amendment to claims 8 and 15, according to the Examiner, overcomes this rejection. Accordingly, withdrawal of this rejection is respectfully requested.

II. Rejection of claims 1-2 under 35 USC §102(e)

On page 2 of the Office action, the Examiner rejected claims 1 and 2 under 35 USC §102(e) as being anticipated by published patent application of Gillman (U.S. Patent App. Pub. No. 2002/0147674 A1, hereinafter "Gillman"). Applicants respectfully disagree.

Applicants assert Gillman is not prior art under 35 USC §102(e) because Applicants assert that they invented the presently claimed invention prior to April 4, 2000 as stated in the 37 C.F.R. 1.131 Declaration, attached hereto as Exh. A. As such, the rejections with respect to Gillman are considered moot.

SUPPLEMENTAL RESPONSE TO JANUARY 6, 2005 OFFICE ACTION
Serial No. 09/781,937
Page 22 of 25

Accordingly, withdrawal of this rejection of claims 1 and 2 is respectfully requested.

III. Rejection of claims 49-54, 60-64 and 66-67 under 35 USC §102(e)

On page 5 of the Office action, the Examiner rejected claims 49-54, 60-64 and 66-67 under 35 USC §102(e) as being anticipated by Marsh et al. (U.S. Patent No. 6,574,465, hereinafter "Marsh"). Applicants respectfully disagree.

Applicants assert Marsh is not prior art under 35 USC §102(e) because Applicants assert they invented the presently claimed invention prior to April, 2000 as stated in the 37 C.F.R. 1.131 Declaration, attached hereto as Exh. A. As such, the rejections with respect to Gillman are considered moot. Accordingly, withdrawal of this rejection of claims 49-54, 60-64 and 66-67 is respectfully requested.

IV. Rejection of Claims 3, 6-11 and 13-15 under 35 USC § 103

On page 14 of the Office action, the Examiner rejected claims 3, 6-11 and 13-15 under 35 USC § 103(a) as being unpatentable over Gillman in view of Fertik (U.S. Patent Pub. No. 2001/0032163 A1, hereinafter "Fertik"). Applicants respectfully disagree.

As discussed above, Gillman does not qualify as a prior art reference. Therefore, a rejection under 35 USC § 103 based upon combination of Gillman and Fertik is improper. Accordingly, withdrawal of this rejection of claims 3, 6-11 and 13-15 is respectfully requested.

V. Rejection of Claim 4 under 35 USC § 103

On page 22 of the Office action, the Examiner rejected claim 4 under 35 USC § 103(a) as being unpatentable over Gillman in view of Marsh. Applicants respectfully disagree.

As discussed in more detail above, Gillman and Marsh do not qualify as prior art references. Therefore, any combination of the two would be improper. Accordingly, withdrawal of this rejection of claim 4 is respectfully requested.

VI. Rejection of Claim 5 under 35 USC § 103

On page 25 of the Office action, the Examiner rejected claim 5 under 35 USC § 103(a) as being unpatentable over Gillman in view of the Examiner's Official Notice. Applicants respectfully disagree.

SUPPLEMENTAL RESPONSE TO JANUARY 6, 2005 OFFICE ACTION
Serial No. 09/781,937
Page 23 of 25

As discussed in more detail above, Gillman does not qualify as a prior art reference. Accordingly, withdrawal of this rejection of claim 5 is respectfully requested.

VII. Rejection of Claim 12 under 35 USC § 103

On page 25 of the Office action, the Examiner rejected claim 12 under 35 USC § 103(a) as being unpatentable over Gillman in view of Fertik, as applied to claim 9 above, and further in view of Marsh. Applicants respectfully disagree.

As discussed in more detail above, Gillman does not qualify as a prior art reference. Therefore, any combination of Gillman in view of Fertik and further in view of Marsh would be improper. Accordingly, withdrawal of this rejection of claim 12 is respectfully requested.

VIII. Rejection of Claims 16-23, 25-27, 28-33, 35-43 and 45-48 under 35 USC § 103

On page 28 of the Office action, the Examiner rejected claims 16-23, 25-27, 28-33, 35-43 and 45-48 under 35 USC § 103(a) as being unpatentable over Ben-Meir (U.S. Pat. Pub. No. 2993/0014326 A1, hereinafter "Ben-Meir") in view of Marsh. Applicants respectfully disagree.

As discussed above in more detail, Marsh does not qualify as a prior art reference. Therefore, any combination of Ben-Meir in view of Marsh would be improper. Accordingly, withdrawal of this rejection of claims 16-23, 25-27, 28-33, 35-43 and 45-48 is respectfully requested.

IX. Rejection of Claims 24, 34 and 44 under 35 USC § 103

On page 67 of the Office action, the Examiner rejected claims 24, 34 and 44 under USC § 103(a) as being unpatentable over Ben-Meir in view of Marsh, as applied to claim 16 above, and further in view of Hoffman (U.S. Pat. Pub. No. 2001/0039529 A1, hereinafter "Hoffman"). Applicants respectfully disagree.

As discussed in more detail above, any combination of Ben-Meir in view of Marsh would be improper. Therefore, Ben-Meir in view of Marsh and further in view of Hoffman would be improper. Accordingly, withdrawal of this rejection is respectfully requested.

SUPPLEMENTAL RESPONSE TO JANUARY 6, 2005 OFFICE ACTION
Serial No. 09/781,937
Page 24 of 25

X. Rejection of Claim 52 under 35 USC § 103

On page 70 of the Office action, the Examiner rejected claim 52 under USC § 103(a) as being unpatentable over Marsh in view of Ben-Meir. Applicants respectfully disagree.

As discussed above in more detail, Marsh does not qualify as a prior art reference. Therefore, any combination of Ben-Meir in view of Marsh would be improper. Accordingly, withdrawal of this rejection of claim 52 is respectfully requested.

XI. Rejection of Claims 55 and 65 under 35 USC § 103

On page 71 of the Office action, the Examiner rejected claims 55 and 65 under USC § 103(a) as being unpatentable over Marsh, in further view of An (U.S. Pat. No. 4,726,056, hereinafter "An"). Applicants respectfully disagree.

As discussed in more detail above, Marsh fails as a primary reference. Therefore, any admissible combination of Marsh with An would not render these claims obvious. Accordingly, withdrawal of this rejection is respectfully requested.

XII. Rejection of Claims 56-57 and 68-69 under 35 USC § 103

On page 75 of the Office action, the Examiner rejected claims 56-57 and 68-69 under USC § 103(a) as being unpatentable over Marsh in view of Barak (U.S. Pat. No. 6,078,652, hereinafter "Barak"). Applicants respectfully disagree.

As discussed in more detail above, Marsh fails as primary reference. Therefore, any admissible combination of Marsh with Barak would not render these claims obvious. Accordingly, withdrawal of this rejection is respectfully requested.

XIII. Rejection of Claims 58-59 under 35 USC § 103

On page 81 of the Office action, the Examiner rejected claims 58-59 under USC § 103(a) as being unpatentable over Marsh in view of Mason (U.S. Pat. Pub. 2001/0051918 A1, hereinafter "Mason"). Applicants respectfully disagree.

As discussed in more detail above, Marsh fails as a primary reference. Therefore, any admissible combination of Marsh with Mason would not render these claims obvious. Accordingly, withdrawal of this rejection is respectfully requested.

SUPPLEMENTAL RESPONSE TO JANUARY 6, 2005 OFFICE ACTION

Serial No. 09/781,937

Page 25 of 25

XIV. Rejection of Claims 70-71 under 35 USC § 103

On page 83 of the Office action, the Examiner rejected claims 70-71 under USC §103(a) as being unpatentable over Marsh in view of Ben-Meir, and further in view of Mason. Applicants respectfully disagree.

As discussed in more detail above, both Marsh and Ben-Meir fail as primary references. Therefore, any admissible combination of Marsh with either Ben-Meir or Mason, would not render these claims obvious. Accordingly, withdrawal of this rejection is respectfully requested.

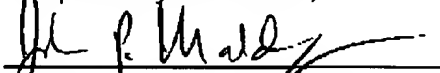
Conclusion

Thus, Applicants submit claims 1-71 fully satisfy the requirements of 35 U.S.C. §§102 and 103. Consequently, Applicants believe all these claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes there are any unresolved issues requiring the issuance of a final action in any of the claims now pending in the application, it is requested that the Examiner telephone Mr. John P. Maldjian at (732) 935-7100 so appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Oct 14, 2005
Date

Respectfully submitted,


John P. Maldjian, Attorney
Reg. No. 41,967
(732) 935-7100
Moser IP Law Group
1040 Broad Street
Shrewsbury, NJ 07702

11605_1